



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 6785812

Date: FEB. 20, 2020

**Motion on Administrative Appeals Office Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a naturopathic physician, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Petitioner appealed the matter to us, and we dismissed the appeal.<sup>1</sup> The matter is now before us on motion to reopen. With the motion, the Petitioner submits additional documentation and a statement asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion.

**I. LAW**

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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<sup>1</sup> *See Matter of G-C-L-*, ID# 3135063 (AAO May 14, 2019).

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>2</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>3</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>4</sup>

## II. ANALYSIS

At the time of filing, the Petitioner was working as a naturopathic physician at her private medical practice in [REDACTED] Minnesota. With respect to her proposed endeavor, the Petitioner indicated that she intends “to continue to practice naturopathic medicine on patients with cancer and other medical conditions or diseases for which treatment options have either been exhausted or not yet explored.”

In our prior decision, we concluded that the Petitioner’s proposed clinical work as a naturopathic physician did not meet the “national importance” element of *Dhanasar*’s first prong. We determined

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<sup>2</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>3</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

<sup>4</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

that the evidence was insufficient to show that her clinical work would impact the field of naturopathic medicine and healthcare industry more broadly, as opposed to being limited to the patients she serves.<sup>5</sup>

On motion, the Petitioner does not offer new facts or evidence relevant to our findings. Instead, she provides copies of previously submitted documents<sup>6</sup>; information relating to her immigration history and request for deferred action; and a letter of support from the couple with whom she currently resides attesting to her character and describing her immigration situation. She also presents updated copies of her résumé, professional memberships, and state medical licenses.<sup>7</sup> This information and evidence, however, does not offer broader implications to support a finding of national importance under the first prong of the *Dhanasar* analytical framework.

In addition, the Petitioner submits a detailed statement discussing her personal motivations, family history, interactions with USCIS and U.S. Immigration and Customs Enforcement, and medical practice.<sup>8</sup> Regarding the national importance of her proposed endeavor, she asserts:

I have a very unique practice, as you can see, my patients start coming from different states besides referring them out of state of [Minnesota] for specific treatments. I truly believe based on my unique background, the intensive medical and laboratory training that this country has invested in me, and my ability as a naturopathic physician, clinical laboratory scientist and medical technologist is recognized through the testimonies of my patients and their families, and the accumulative evidence that is enclosed indicates my practice is of national importance though could be more significant without immigration ordeal.

While the Petitioner contends that her proposed endeavor involves serving patients from both outside and inside Minnesota, as well as referring some of them to out-of-state treatment options, this information does not establish that her clinical work offers broader implications for the naturopathic medicine field or U.S. healthcare industry more broadly rather than mainly affecting the patients under her care. As the Petitioner has not presented new facts or evidence to establish the national importance of her proposed endeavor, she has not met *Dhanasar*'s first prong.

### III. CONCLUSION

The documentation provided in support of the motion to reopen does not overcome the grounds underlying our previous decision. As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

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<sup>5</sup> Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>6</sup> For example, the Petitioner resubmits letters of support from various patients explaining how she provided them with quality care and improved their health.

<sup>7</sup> The Petitioner's education and medical experience listed in her résumé, and her professional memberships and physician licenses are considerations under *Dhanasar*'s second prong, which "shifts the focus from the proposed endeavor to the foreign national." *Id.* at 890. The issue under the first prong is whether the Petitioner has demonstrated the national importance of her proposed work.

<sup>8</sup> The Petitioner's discussion of her medical practice includes multiple summaries of her clinical work with various patients.

**ORDER:** The motion to reopen is dismissed.